

* **HIGH COURT OF DELHI : NEW DELHI**

+ 1. Writ Petition (Civil) No.15945 of 2006

Judgment reserved on: August 30, 2007

% Judgment delivered on: December 3, 2007

Kalyani Steels Ltd.

Through its Company Secretary

Mundhwa, Pune-411 036.

...Petitioner

Through Mr. Sandeep Sethi, Sr. Advocate with
Mr. Rajesh Sharma, Advocate

Versus

1. The Secretary, Revenue
The Ministry of Finance
Government of India
North Block, New Delhi.

2. The Designated Authority
Directorate General of Anti-Dumping & Allied Duties
Ministry of Commerce and Industry
Department of Commerce
Government of India
Udyog Bhawan, New Delhi.

3. Maharashtra Seamless Ltd.
H.O. : 235, Okhla Industrial Estate
New Delhi-110 020.

...Respondents

Through Mr. P.P. Malhotra, ASG with Mr. Suresh
Kait, Advocate for Respondents No.1 & 2
Mr. Atul Sharma, Advocate for Resp. 3

WITH

+ 2. Cus. A.C. No.16 of 2006

Kalyani Steels Ltd.

Mundhwa, Pune-411 036.

...Appellant

Through Mr. Sandeep Sethi, Sr. Advocate with
Mr. Rajesh Sharma, Advocate

Versus

1. The Secretary (Revenue)
The Ministry of Finance
Government of India
North Block, New Delhi.
 2. The Designated Authority
Directorate General of Anti-Dumping & Allied Duties
Ministry of Commerce and Industry
Department of Commerce
Government of India
Udyog Bhawan, New Delhi. ...Respondents
- Through Mr. P.P. Malhotra, ASG with Mr. Suresh
Kait, Advocate for the Respondents.

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MADAN B. LOKUR, J.

1. In a writ petition filed under Article 226 of the Constitution, the Petitioner has prayed for an appropriate writ to the Central Government not to withdraw the anti-dumping duty imposed by Notification No.65/2001-Cus dated 25th June, 2001.
2. It may be mentioned that the anti-dumping duty was provisionally imposed by Notification No. 151/2000-Cus dated 26th December, 2000 till 25th June, 2001. Thereafter, it was extended by the Notification dated 25th June, 2001 and was to remain in force for 5 years with effect from 26th December, 2000. However, it was prematurely

withdrawn by Notification No.69/2005-Cus dated 19th July, 2005. That is why the Petitioner is aggrieved.

3. The withdrawal Notification dated 19th July, 2005 was challenged by the Petitioner before the Customs, Excise and Service Tax Appellate Tribunal (for short the Tribunal) and in its decision dated 2nd August, 2006 the Tribunal set aside the impugned Notification but declined to extend the imposition of anti-dumping duty beyond the initial period of 5 years. Therefore, the prayer of the Petitioner before us is that effectively we should continue the anti-dumping duty imposed by the Central Government by the Notification dated 26th December, 2000 read with the Notification dated 25th June, 2001 beyond the original period of 5 years.

4. Against the decision dated 2nd August, 2006, the Petitioner preferred an appeal in this Court being Cus. A.C. No. 16/2006. On 7th May, 2007, the appeal was admitted and the following substantial question of law was framed for consideration: -

“Whether the Customs, Excise and Service Tax Appellate Tribunal was right in law in holding that under the first proviso to Section 9A(5) of the Customs Tariff Act, 1975 the Central Government cannot extend the period of imposition of anti-dumping duty in view of the main part of Section 9A(5) of the Act?

5. Essentially since the question raised in the writ petition as well as in the appeal is the same, we propose to dispose of both the matters by this common judgment and order.

FACTS:

6. India is a signatory to the General Agreement on Tariffs and Trade, 1994 (for short the GATT). It is also bound by the Agreement on Implementation of Article VI of the GATT, 1994 which is commonly referred to as the Anti Dumping Agreement.

7. Pursuant to the Anti Dumping Agreement, the Customs Tariff Act, 1975 was amended to incorporate Section 9A, 9AA, 9B and 9C therein. By virtue of powers conferred by Section 9A(6) of the Customs Tariff Act, 1975 (for short the Act) the Central Government notified the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the Rules).

8. The broad background facts of the case as placed before us suggest that representations were made by the domestic industry to the Central Government, in which it was alleged that certain seamless grade alloy and non-alloy steel billets, bars and rounds (for short the subject goods) originating in or exported from Russia, China and Ukraine are being dumped into India. Consequently, the Designated Authority under the Act initiated an investigation as contemplated by Rule 5 of the Rules. As a result of the investigation, the Designated Authority made a recommendation on 1st December, 2000 that anti-dumping duty should be provisionally imposed on the subject goods originating in or exported from Russia and China. The recommendation was accepted by the Central Government and a Notification dated 26th December, 2000 was issued by the Central Government provisionally imposing anti-

dumping duty on the import of the subject goods from Russia and China upto 25th June, 2001.

9. Later on 1st June, 2001, the Designated Authority gave its final findings recommending imposition of definitive anti-dumping duty on all imports of the subject goods from Russia and China. This recommendation was also accepted by the Central Government and on 25th June, 2001 a Notification was issued by the Central Government imposing anti-dumping duty on the subject goods for a period of five years with effect from 26th December, 2000 till 25th December, 2005.

10. On 3rd March, 2004, Respondent No.3 (Maharashtra Seamless Ltd.) requested the Designated Authority under the Act to carry out a mid-term review of the anti-dumping duty on the subject goods imported from Russia, China and Ukraine. The purpose of a mid-term review, as contemplated by Section 9A(5) of the Act read with Rule 23 of the Rules is to ascertain whether there is any justification for continuing with the anti-dumping duty.

11. Sections 9A(5) of the Act and Rule 23 of the Rules read as follows:

“9A. Anti-dumping duty on dumped articles:

(1) to (4) xxx xxx xxx

(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty

may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.
(6) to (8) xxx xxx xxx”

23. Review. – (1) The designated authority shall, from time to time, review the need for the continued imposition of the anti-dumping duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty recommend to the Central Government for its withdrawal.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.

(3) The provisions of rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review.”

12. As a result of the representation, the Designated Authority issued a public notice on 24th May, 2004 initiating a mid-term review regarding anti-dumping duty imposed on imports of certain seamless grade alloy and non-alloy steel billets, bars and rounds from Russia, China and Ukraine. At this stage, it is necessary to quote the language of paragraph 3 of the public notice. This is what is said in paragraph 3 of the public notice: -

“Having decided to review the final findings notified vide No 31/1/99 dated 1st June, 2001 and final duty imposed on 26th June, 2001, the Authority hereby initiates investigations to review the need for the continued imposition of anti-dumping duty and whether cessation of anti dumping duty is likely to lead to continuation or recurrence of dumping and injury on imports of certain seamless grade alloy and non alloy steel billets, bars and rounds originating in or exported from Russia, China and Ukraine in accordance with the Customs Tariff (Amendment) Act, 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.”

It is important to note that the public notice mentioned the need to review the continued imposition of anti-dumping duty and whether

cessation of anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury on the import of the subject goods. This is quite the same language employed in the first proviso to Section 9A(5) of the Act.

13. On a reading of the public notice dated 24th May, 2004 issued by the Designated Authority, it appears that though it was captioned as an initiation of a mid-term review, it was in letter and spirit a 'sunset review' in terms of the first proviso to Section 9A(5) of the Act.

14. Apparently realizing that what was intended was a mid-term review (though the language employed was different) or perhaps back tracking on its stated intention, the Designated Authority issued a Corrigendum dated 5th January, 2005 to the public notice dated 24th May, 2004. The original paragraph 3 was substituted by the following paragraph:

"Having decided to review the final findings notified vide No. 31/1/99 dated 1st June, 2001 and final duty imposed on 26th June, 2001, the Authority hereby initiates mid-term review investigations to review the need for the continued imposition of anti-dumping duty on imports of certain types/grades of alloy and non alloy steel billets, bars and rounds originating in or exported from Russia and China PR in accordance with the Customs Tariff (Amendment) Act, 1975 and the Customs Tariff (Identification, Assessment & Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995."

15. In the meanwhile, proceedings continued before the Designated Authority on the basis of a sunset review postulated by the first proviso to Section 9A(5) of the Act. This is clear from the representation dated 27th July, 2004, written submissions filed subsequent to the oral hearing

granted by the Designated Authority on 7th December, 2004 and the rejoinder submissions dated 3rd January, 2005 all filed by the domestic industry. In the representation dated 27th July, 2004 the domestic industry concluded and prayed as follows:

- “1. The present initiation of investigations is without sufficient cause and justification with no material evidence with regard dumping and/or injury;
2. Subject goods continues to be dumped in the Indian market by the producers and/or exporters in Russia resulting in continued dumping;
3. The dumping margin has increased;
4. The domestic industry continues to suffer injury and there is a great likelihood that revocation would lead to injury to the domestic industry;
5. The injury to the domestic industry is being caused by the dumped imports from Russia;
6. The injury margin has increased in respect of imports from both the countries;
7. Anti Dumping Duties are required to be continued further for a further period of five years.”

In the written submissions subsequent to the oral hearing on 7th December, 2004 the summary and conclusions of the domestic industry were as follows:

- “1. The petitioner have failed to brought any evidence, which suggests a need for withdrawal of duty;
2. Present initiation is bad in law as petitioner failed to establish “changed circumstances” warranting initiation of review investigation.
3. Imposition of duty has helped the domestic industry improve its performance. The anti dumping duty should therefore be continued further.
4. Continued dumping from Russia and Ukraine is required to be checked with imposition of continued anti dumping duty.
5. Dumping margin in case of Russian exports has increased.
6. In case duty is withdrawn dumping and consequent injury to the domestic industry will intensify.”

Finally, in the rejoinder submissions dated 3rd January, 2005 the domestic industry concluded as follows:

“It would be seen that there is no justifiable ground for withdrawal of anti dumping duty. In fact, the present anti dumping duty is required to be enhanced. Domestic industry has provided all relevant information in this regard and is willing to provide any further information.”

16. In view of the corrigendum dated 5th January, 2005, the focus of investigations by the Designated Authority shifted from a sunset review to a mid-term review, that is to say from continuation of the anti-dumping duty beyond a period of five years to the justification for continuing the anti-dumping duty for the existing period of five years.

17. There is no dispute between the parties that procedural formalities resulting from the shift in focus were duly carried out and eventually the Designated Authority gave its final findings which were gazetted on 20th May, 2005. As per the final findings, the recommendation of the Designated Authority was as follows: -

“Having concluded that no material injury to the domestic industry has been established on account of dumped imports of subject goods from the subject countries and there is no likelihood of recurrence of injury on account of import of subject goods from subject countries, the Authority finds no justification for continuation of the duty against subject countries and therefore, in terms of Rule 23 of the said Rules recommends revocation of anti dumping duty in force against subject countries i.e. China PR and Russia. Hence, in view of the above, the Authority recommends withdrawal of the anti dumping duty imposed vide notification No. 65/2001-Customs dated 25.6.2001 with effect from the date of notification issued by the Central Government.”

18. It may be mentioned that the recommendation made in the final findings was only confined to the injury aspect of dumping and

concerned itself only with the justification for continuing the anti-dumping duty for the balance of the five year period originally notified by the Notification dated 25th June, 2001.

19. The final findings of the Designated Authority were accepted by the Central Government which issued a Notification dated 19th July, 2005 withdrawing the anti-dumping duty.

20. In the meanwhile, since the Petitioner was aggrieved by the final findings of the Designated Authority, it filed WP (C) No.10615/2005 in this Court. When that petition came up for hearing on 1st August, 2005, it was pointed out to the Court that the final findings of the Designated Authority were appealable before the Tribunal and that a Notification dated 19th July, 2005 had already been issued by the Central Government withdrawing the anti-dumping duty. Upon hearing learned counsel for the parties, a learned Single Judge of this Court passed an order staying the operation of the Notification dated 19th July, 2005 conditional on the Petitioner filing an appeal before the Tribunal within a period of 15 days.

21. It appears that the Petitioner did file its appeal within the prescribed time but the matter could not be taken up by the Tribunal for final disposal. Consequently, the Petitioner was again constrained to file WP (C) No. 24007/2005 requesting for expeditious disposal of the appeal as well as for continuation of the stay of operation of the Notification dated 19th July, 2005.

22. The fresh writ petition being WP (C) No. 24007/2005 was disposed of by this Court on 20th December, 2005 with a direction that

the operation of the Notification dated 19th July, 2005 would remain stayed till the Petitioner's application for interim relief is disposed of by the Tribunal by a speaking order. The effect of the order dated 20th December, 2005 was really for a period of few days only since by efflux of time the original Notification imposing anti-dumping duty lapsed on 25th December, 2005.

23. The appeal filed by the Petitioner before the Tribunal was eventually taken up for final disposal and by an order dated 2nd August, 2006, the appeal was allowed to the extent that the final findings dated 20th May, 2005 given by the Designated Authority as well as the Notification dated 19th July, 2005 were set aside by the Tribunal.

24. It appears that before the Tribunal the Petitioner had contended that the imposition of anti-dumping duty may be continued for a period of five years beyond 25th December, 2005 since there was adequate material available on record to suggest that the conditions of the first proviso to Section 9A(5) of the Act were fulfilled. This contention was rejected by the Tribunal in the following words: -

“The contention that we should extend the imposition of duty for a further period of five years cannot be countenanced. When the review is initiated for determining whether as a result thereof, anti dumping duty should be revoked before the expiry of the period of five years, obviously its continuance beyond five years can never be a matter under consideration in such a review, because, the impost itself was for a statutory duration of five years, and the question of continuance can arise only beyond that. Since we are concerned only with mid-term review in which duty could only be revoked earlier, and there would be no new imposition of duty, the provisions of continuing the duty beyond five years as contained in the two provisos to Section 9A(5) would not be attracted. In a mid-term review the real question is whether duty should

be revoked earlier than the period of five years of its statutory duration and not whether it should be continued beyond the period of five years, which would be the scope of enquiry in a “sunset review”. We, therefore reject the contention that on our finding that there was no case made out for earlier revocation, we should be directing the continuance of duty beyond five years in a mid term review.”

25. It is against the view expressed by the Tribunal that it cannot extend the anti-dumping duty beyond the original period of five years that the Petitioner filed Cus. A.C. No. 16/2006 in this Court. As mentioned above, the Petitioner also filed a writ petition for restraining the Central Government from withdrawing the anti-dumping duty imposed vide Notification dated 25th June, 2001.

SUBMISSIONS AND DISCUSSION:

26. It is submitted by learned counsel for the Petitioner that clearly there is no valid reason for the Designated Authority to make a recommendation on 20th May, 2005 that continuing the anti-dumping duty till 25th December, 2005 was not justified. It is also submitted that there is no valid reason for the Central Government to accept the final findings of the Designated Authority and issue the Notification dated 19th July, 2005 withdrawing the anti-dumping duty. This was the view clearly expressed by the Tribunal and that view has been accepted both by the Designated Authority as well as by Central Government, neither of whom challenged the order passed by the Tribunal. It is, therefore, manifest that, in any case, the anti-dumping duty ought to have continued till 25th December, 2005. To this extent, we are in complete agreement with learned counsel for the Petitioner. In fact, the view

canvassed by learned counsel for the Petitioner is not even seriously challenged by the learned Additional Solicitor General who admits that the decision rendered by the Tribunal on 2nd August, 2006 has been accepted by the Designated Authority and the Central Government.

27. The second limb of the contention of learned counsel for the Petitioner is that the conditions postulated by the first proviso to Section 9A(5) of the Act are met, in as much as the cessation of anti-dumping duty is more than likely to lead to continuation and recurrence of dumping and also injury to the domestic industry. This was repeatedly stated by the domestic industry in all its representations before the Designated Authority which had initially intended to look into the question of recurrence of dumping and injury to the domestic industry when it issued the public notice dated 24th May, 2004. However, for some reason, the Designated Authority decided to convert the 'sunset review' postulated by the first proviso to Section 9A(5) of the Act into a mid-term review. It is submitted that even if the original intention of the Designated Authority was only to conduct a mid-term review, there was certainly no bar on its conducting a sunset review when adequate materials were placed before the Designated Authority. Moreover, the prayer that a sunset review should be conducted was made by the domestic industry on more than one occasion before the Designated Authority. Even assuming that the Designated Authority could not consider the extension of anti-dumping duty, it was incumbent upon the Designated Authority to have forwarded the necessary materials to the Central Government to conduct a suo motu sunset review as postulated

by the first proviso to Section 9A(5) of the Act read with Rules 23 of the Rules.

28. Unfortunately, we are not able to get any satisfactory answer from the learned Additional Solicitor General to the contention raised by learned counsel for the Petitioner. All that is submitted is that the powers of the Designated Authority are limited in view of the decision of the Supreme Court in *Rishiroop Polymers Pvt. Ltd. vs. Designated Authority and Additional Secretary, 2006 (196) ELT 385*. We were taken through the decision by the learned Additional Solicitor General and while it is correct that the powers of the Designated Authority are limited only to conducting a mid-term review, but that does not prevent the Designated Authority, on the material placed before it, to recommend to the Central Government to conduct a sunset review. Moreover, there is nothing in the Act which prohibits the Central Government from exercising suo motu powers for conducting a sunset review. It is true that the parameters for conducting a sunset review are completely different from the parameters for conducting a mid-term review but that does not mean that the authorities under the Act, that is, the Designated Authority as well as the Central Government cannot shift gears and conduct a suo motu sunset review if the situation so warrants. In the present case, there was no need for the Central Government to have exercised suo motu powers, since the domestic industry had already requested for a sunset review, and this request ought to have been considered.

29. Admittedly, there was no valid reason for the Central Government to have prematurely withdrawn the anti-dumping duty by issuing the Notification dated 19th July, 2005. What this means, in other words, is that it was necessary to continue the anti-dumping duty at least upto 25th December, 2005. The question that we are asked to answer is whether the anti-dumping duty ought to have continued even beyond that date. We are of the opinion that this is really for the Central Government to decide. While the facts and figures may ultimately prove or disprove the apprehensions of the domestic industry that there would be continuance or recurrence of dumping and injury to the domestic industry the least that could be expected from the Central Government is to consider the issue whether anti-dumping duty should be continued beyond the initial period of five years or not. This is because the domestic industry had voiced its apprehensions repeatedly in the representation dated 27th July, 2004, the written submissions filed subsequent to the oral hearing granted by the Designated Authority on 7th December, 2004 and the rejoinder submissions dated 3rd January, 2005. It was, therefore, incumbent on the Designated Authority or the Central Government to have applied its mind to the representations made by the domestic industry and taken a view thereon, one way or the other. This was not done by the Central Government leading to the filing of the writ petition which we are considering.

30. The counter affidavit filed by the Central Government seeks to justify the non-consideration of the representation of the domestic industry by making a distinction between Article 11.3 of the Anti

Dumping Agreement and the law as enacted in India. The contention of the Central Government is that the municipal law will override the Anti Dumping Agreement. Of course, there is no doubt about this proposition but the question is whether there is any conflict between the municipal law and Article 11.3 of the Anti Dumping Agreement. The municipal law is laid down in the provisions that we have referred to above while Article 11 of the Anti Dumping Agreement reads as follows: -

“11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.”

We are of the view that there is no conflict between Article 11 of the Anti Dumping Agreement and the municipal law. Both contemplate an initial imposition of anti-dumping duty, a review from time to time (or a mid-term review) to determine whether the said imposition should be continued or withdrawn and a final review (or sunset review) at the end of five years from the initial imposition to determine whether the anti-dumping duty should cease or should continue for a further period of five years. The parameters laid down by the municipal law as well as Article 11.3 of the Anti Dumping Agreement are the same, namely, that the cessation of anti-dumping duty would lead to continuation or recurrence of dumping and injury to the domestic industry. The error that the Central Government has made in its interpretation of the municipal law is that it has given a very restricted meaning to Section 9A(5) of the Act read with Rules 23 of the Rules.

31. It is true that neither Section 9A(5) of the Act nor Rule 23 of the Rules mention a mid-term review or a sunset review but it is quite clear that the first proviso to Section 9A(5) of the Act refers to nothing else but a sunset review as commonly understood. Rule 23 of the Rules clearly applies to a mid-term review (as suggested by the Central Government). The question is, does it apply to a sunset review also. If the answer is in the negative, as sought to be suggested in the counter affidavit of the Central Government, it would only mean that the power conferred by the first proviso to Section 9A(5) of the Act is completely uncanalized and no procedure is laid down for the Central Government to conduct a sunset review. Obviously, this cannot be the intention of the legislature

since every such power conferred cannot be arbitrary and must be guided through an appropriate mechanism and in the instant case the mechanism proposed by the Central Government itself is contained in Rules 23(3) of the Rules. There is, therefore, no conflict between the municipal law and Article 11.3 of the Anti Dumping Agreement. Both seek to serve the same purpose and while the Anti Dumping Agreement does not lay down the procedure for conducting a sunset review, the first proviso to Section 9A(5) read with Rule 23 lays down the procedure for conducting a sunset review.

32. We are, therefore, not at all in agreement with the view canvassed by the learned Additional Solicitor General on behalf of the Central Government that a sunset review was not possible in the circumstances of the case and that the domestic industry was only entitled to be heard in respect of a mid-term review. A request having been made by the domestic industry for a sunset review, it ought to have been considered by the Central Government and if so advised, rejected on merits.

33. We may note that we have taken the same view in *Indian Metal & Ferro Alloys Ltd. v. Designated Authority & Anr.*, WP (C) No. 16893/2006 decided on 1st November, 2007.

34. In so far as the substantial question of law that has been framed in Cus. A.C. No. 16/2006 is concerned, we are of the view that it must be answered in the affirmative in as much as the Tribunal exercises a statutory jurisdiction. What was before the Tribunal was the question whether the Central Government was justified in prematurely withdrawing the anti-dumping duty or not. The question before the

Tribunal was not whether the Central Government can extend the anti-dumping duty beyond the original period of five years. If such an issue could have been raised before the Tribunal it could only have been done after the Central Government had taken a decision on the sunset review but since that has not happened, we need not go into that question and leave it to be considered in an appropriate case.

RELIEF:

35. The sole question that now remains is with regard to the grant of relief to the Petitioner. Obviously, the Notification dated 25th June, 2001 has worked itself out. The Central Government has not yet applied its mind to the question whether anti-dumping duty should continue beyond 25th December, 2005 although the domestic industry has represented for its continuation. Under the circumstances, the only relief that can be granted to the Petitioner is that the Central Government must consider the question, in exercise of powers conferred by the first proviso to Section 9A(5) of the Act, whether anti-dumping duty on the subject goods should continue for a period of five years from 25th December, 2005. The procedure that the Central Government is required to follow is laid down in Rules 23(3) of the Rules.

36. Since almost two years have gone by in the litigation initiated by the Petitioner before the Tribunal as well as before this Court, we cannot really turn the clock back to December, 2005. We are also of the opinion that some importers of the subject goods, such as Respondent No. 3 and perhaps others may have already entered into contracts for the import of seamless grade alloy and non-alloy steel billets, bars and rounds

originating in or exported from Russia and China. It would not be appropriate to interfere with the contractual liabilities that have already been established since it may lead to avoidable controversies. We, therefore, direct that all imports of the subject goods made from Russia and China with effect from 1st February, 2008 should be provisionally cleared by the Central Government and its nominees such as the Customs Officers. In the meanwhile, the Central Government should carry out a review to determine whether the anti-dumping duty imposed by the Notification dated 25th June, 2001 should continue beyond the period of five years from 26th December, 2005 onwards. If it is found by the Central Government that the requirements of the first proviso to Section 9A(5) of the Act are met and anti-dumping duty should continue, then the provisional assessments made with effect from 1st February, 2008 will take care of the interests of the domestic industry. On the other hand, if it is found that there is no reason to continue with the anti-dumping duty, the provisional assessment can always be finalized without any detriment to the rights of the Indian importers of the subject goods. It is expected that the Central Government will complete the review as expeditiously as possible.

37. With the above directions, the writ petition is allowed. No costs.

Madan B. Lokur, J

December 3, 2007
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S. Muralidhar, J